IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1949 OF 2007

Shri.Ramesh D. Vora. ..Petitioner.
Versus
The Senior Inspector of Police
and Anr. ..Respondents.

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Mr.Shirish Gupte, Sr.Counsel with Mr.Subhodh Desai, Adv. for the Petitioner.
Mr.A.S.Gadkari, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.
DATED : OCTOBER 19, 2007.

P.C.:-

1. Heard. Rule. By consent, rule is made returnable forthwith.

2. The petitioner challenges the order dated 20th September, 2007 passed by the Metropolitan Magistrate, Railway Mobile Court, Andheri in C.C. No.1118/PW/2007 whereby the learned Magistrate has called for say of the accused on an application filed by the complainant under Section 173(8) of the Code of Criminal Procedure for necessary directions for further investigation in the matter.

3. The limited point which is sought to be

canvassed in the matter is that at the stage of consideration of application under Section 173(8) of the Code of Criminal Procedure, question of hearing the accused does not arise and, therefore, the Magistrate could not have asked for the say of the accused while considering the application filed by the petitioner under Section 173(8) of the Code. The proposition canvassed can hardly be disputed. The law on the point is well settled that at the stage of investigation or at the stage where the investigation is in progress or the complainant is able to satisfy the Magistrate about the need for further investigation in the matter, question of hearing the accused does not arise. It is essentially to ascertain whether there is any material available in support of the accusation against the accused that the investigation is required to be carried out. Being so, if the accused is given any opportunity of being heard at that stage, there is every possibility that the very purpose of investigation could be defeated. The law on that point being well settled, as rightly submitted by the learned Counsel appearing for the petitioner, the Magistrate was not required

to call for the say of the accused on an application filed by the petitioner under Section 173(8) of the Code. The Magistrate, himself on consideration of the contents of the application and the submissions which would be made in support of such application, is required to take appropriate decision in that regard and question of hearing the accused at that stage does not arise.

4. For the reasons stated above, therefore, the impugned order requiring say of the accused in the matter cannot be sustained and is liable to be set-aside. Hence, the Petition succeeds. The impugned order is set-aside. The Magistrate is directed to dispose of the application filed by the petitioner under Section 173(8) of Code of Criminal Procedure as expeditiously as possible in accordance with the provisions of law without insisting for any say of the accused. Rule is made absolute accordingly with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]